in as good a position as the one for which he really bargained. But where relief can be given only at the vendor's expense, the vendee should suffer the result of his default.

THE FICTION OF CORPORATE ENTITY. — The Northern Securities decision,[1] in going behind the corporation to reach the incorporators, marks but a slight advance in the modern tendency to restrict the application of the theory of a "corporate entity." The way had been cleared for it by decisions[2] declaring that an act of all the stockholders tending to control a corporation or affect the transaction of its business — such as the transfer of all their shares to a "trust" — is the act of the corporation. In saying that the act of a corporation is the act of its stockholders, then, the Circuit Court of Appeals was but declaring the converse of this proposition. But a distinct advance in the direction of narrowing the practical scope of the separate entity theory is made in a recent case. A membership corporation sued a labor union which had declared a strike against it, for an injunction against prospective acts of violence which threatened to injure the businesses of the individual members of the corporation. No injury to corporate property was threatened; yet the court granted the injunction. *Horseshoers' Protect. Ass'n* v. *Quinlivan*, 83 N. Y. App. Div. 459. The case is in advance of the New York and Ohio cases above cited, because in them the action of the stockholders complained of was held to be, in its essence, corporate action, while here the damage was about to be suffered by the members with respect to their individual interests, the corporate business remaining unaffected. It is important to notice, however, that the members were about to suffer merely because of their membership. Identical in principle are the cases in which at the suit of a corporation the Supreme Court of the United States enjoined the levy of an unlawful tax on the shares of its stockholders.[3]

"A fiction of law shall never be contradicted," said Lord Mansfield,[4] "so as to defeat the end for which it was invented; but for every other purpose it may be contradicted." The "legal" entity, distinct from its stockholders, which has been ascribed to a corporation, is by the very force of the term a fiction "of law." And convenience — the convenience of the courts in distinguishing between the rights and liabilities, as individuals and as a body, of the natural persons who compose the corporation — seems, in brief, to have been the end for which it was introduced. At common law a failure to so distinguish would involve the courts in difficulties. For instance, in the principal case money damages recovered would be corporate assets, though the members might have suffered unequal injuries; or, if not corporate assets, how should they be distributed? For a court of law, then, to discard the idea of a legal entity might well defeat the end for which it was invented. But in Equity, since the relief obtained is the enforcement of action by third parties or the restraint of such action, the redress enures at once to each stockholder, and is exactly proportionate to what would be

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[1] United States *v.* Northern Securities Co., 120 Fed. Rep. 721.

[2] People *v.* North River Sugar Refining Co., 121 N. Y. 582; People *v.* Standard Oil Co., 49 Oh. St. 137.

[3] Cummings *v.* Nat. Bk., 101 U. S. 153; *contra*, Waseca Cty. Bk. *v.* McKenna, 32 Minn. 468.

[4] Johnson *v.* Smith, 2 Burr. 962.

his present or prospective loss, if the action were not enforced or restrained. So in the cases in question there seems to be no need to distinguish between rights possessed by the members, considered abstractly as a body, and the rights possessed by them as concrete individuals. To ignore the fiction of separate entity, therefore, and regard the suit as one brought in the corporate name by the members collectively, seems not to "defeat the end" — of convenience — "for which the fiction was invented." On the contrary, a strong reason of convenience for so regarding the suit exists in the consequent avoidance of a multiplicity of separate suits. This has always been one of the objects which Equity has sought to attain; and to attain it by disregarding a legal fiction is in harmony with Equity's habit of neglecting the form and considering the substance.

LEGISLATIVE CONTROL OF MUNICIPAL CONTRACTS. — State legislation declaring what, in the absence of express contract, shall constitute a day's work is generally held constitutional.[1] Several legislatures, however, have attempted to establish prohibitive limitations upon the length of the working-day and the amount of wages. Such laws seem *prima facie* unconstitutional, since they impose a burden on a particular class, take property without due process of law, and restrict the right freely to contract. Only when the public exigency appears considerable are such acts held to be justifiable and constitutional, being then deemed an exercise of the police power of the state. Thus legislative regulation of the labor of women and children, and of employments where exhausting conditions of labor endanger the public, is generally upheld.[2] As regards general conditions of labor, however, the courts have been quick to hold interference unconstitutional.[3] The New York legislature, for example, passed a statute prohibiting any person or corporation, contracting with the state or a municipal corporation, from requiring more than eight hours' work for a day's labor.[4] Indiana also enacted that unskilled labor employed on any public work of the state, counties, cities, and towns shall receive not less than twenty cents an hour.[5] Recent decisions in both states have held that these statutes lie outside the police power and are therefore unconstitutional. *People* v. *Orange, etc., Co.*, 67 N. E. Rep. 129 (N. Y.); *Street* v. *Varney, etc., Co.*, 66 N. E. Rep. 895 (Ind.).

By the use of narrower terms in these statutes, it is conceived that these purposes might have been substantially attained, and upheld on grounds distinct from the police power. When the state regulates the labor contracts of state, county, and municipal governments, it exercises only the right of a contracting party to determine the terms of his bargain. Thus the legislature may obviously prescribe the terms of contracts made by its officers. As regards counties and municipalities, also, in concerns where these governments are mere agents of the state, the legislature may fix the terms of the contract. Highways, bridges, docks, wharves, and railway subways are examples of such contracts.[6] Local concerns, however, such as

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1 Tiedeman, State and Federal Control of Persons and Property § 102.
2 Com. *v.* Hamilton Mfg. Co., 120 Mass. 383; People *v.* Phyfe, 136 N. Y. 554.
3 *In re* Eight Hour Law, 21 Col. 29.
4 Pen. Code § 384 h, subd. 1.
5 Acts 1901, c. 122.
6 People *v.* Detroit, 28 Mich. 228; People *v.* Flagg, 46 N. Y. 401.